

coastal communities environmental and public health concerns. Though the authorized funding level in Title VI is less than I proposed in H.R. 4235, I am pleased to see that the integrity of the structure of my bill was not breached.

Finally, I would like to briefly thank my staff, David Kay, for all his hard work and all the Members who were supportive of my proposal. I am confident that the broad-based support that we garnered in the form of co-sponsors to H.R. 4235 was instrumental in the bill's eventual inclusion as Title VI of H.R. 2204.

Mr. Speaker, I urge that the House support H.R. 2204. I urge the Senate to quickly act to pass it as well and I urge our President to sign this bill into law.

SALUTING RON JAMES—INTREPID DEFENDER OF THE AMERICAN FLAG

HON. GERALD B.H. SOLOMON

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 20, 1998

Mr. SOLOMON. Mr. Speaker, I would like to take this opportunity as we come to the close of the 105th Congress, to recognize a man who has been so instrumental in efforts to protect the eternal symbol of our great nation—the American Flag. That man is Ron James.

Those of us ingrained in the fight to enact the constitutional amendment prohibiting the physical desecration of the American Flag identify Ron James, who we also know as Ronald M. Sorenson, as a true patriot. Ron has devoted countless volunteer hours to promoting the amendment that will return the right of the American people to protect the American Flag—the perennial symbol of American ideals and the countless sacrifices that have been made in securing them. A former Marine, Ron has extended his service to his country well beyond his time in the armed services. His actions on behalf of all veterans and in support of protecting the American flag are truly commendable.

Mr. Speaker, I invite all Members to join me in paying tribute to Ron James, a true American patriot.

MULTIPLE CHEMICAL SENSITIVITY

HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Tuesday, October 20, 1998

Mr. SANDERS. Mr. Speaker, I rise today to discuss the issue of Multiple Chemical Sensitivity as it relates to both our civilian population and our Gulf War veterans. I continue the submission for the RECORD the latest "Recognition of Multiple Chemical Sensitivity" newsletter which lists the U.S. federal, state and local government authorities, U.S. federal and state courts, U.S. workers' compensation boards, and independent organizations that have adopted policies, made statements, and/or published documents recognizing Multiple Chemical Sensitivity disorders for the benefit of my colleagues.

RECOGNITION OF MCS IN 8 U.S. FEDERAL COURT DECISIONS

In decisions affirming MCS (by this or another name) as a real illness, handicap or disability under:

Daubert: *Kannankeril v. Terminix International Inc.* Third Circuit Court of Appeals (CA 3), No 96-5818 [17 Oct. 1997, 5 pages, R-148], overturning a lower court's summary judgement for the defendant (District of NJ, No 92-cv-03150) on a Daubert motion, saying it had "improperly exercised its gate keeping role by excluding" the plaintiff's medical expert, Dr. Benjamin Gerson, and his testimony on causation—specifically his view that the plaintiff developed MCS as a result of overexposure to chlorpyrifos. [Terminix had sprayed Dursban in the plaintiff's home 20 times in 17 months.] The court described MCS as becoming "sensitized to multiple other chemicals" and said "It is an acknowledged scientific fact that chlorpyrifos, the active ingredient in Dursban, is harmful to humans and can cause the very symptoms displayed by Dr. Kannankeril," which included headaches, fatigue, numbness, memory and concentration problems, sleeplessness, nausea, and skin rashes. Even though Dr. Gerson had not examined the plaintiff or written about the toxic effects of organophosphates, the court said his "opinion is not a novel scientific theory" and "is supported by widely accepted scientific knowledge of the harmful nature of organophosphates."

Fair Housing Act: *United States v. Association of Apartment Owners of Dominis West et al.* Case No. 92-00641 (D. Ha.) 25 August 1993 [19 pages, R-61], in which a consent order won by the Department of Justice's Housing and Civil Justice Enforcement Section requires the management of an apartment complex in Honolulu to take several steps to accommodate a tenant with MCS.

Rehabilitation Act: *Vickers v. Veterans Administration*, 549 F. Supp. 85, W.D. Wash. 1982 [4 pages, R-56], in which the plaintiff's sensitivity to tobacco smoke was recognized as handicap by the VA and the court, but his request for totally a smoke-free environment was denied on the grounds that the VA had already made sufficient reasonable efforts; *Rosiak v. Department of the Army*, 679 F. Supp. 444, M.D. Pa. 1987 [6 pages, R-57], in which the court, although finding the plaintiff "not otherwise qualified" to continue working, implicitly recognized his MCS disability, as did the Army, which the court found had made sufficient reasonable (albeit unsuccessful) efforts to accommodate the plaintiff's chemical sensitivity.

Social Security Disability Act: *Slocum v. Califano (Secretary, HEW)*, Civil No. 77-0298 (D. Haw.) 27 August 1979 [9 pages, R-60], in what is believed to be the earliest decision of any court recognizing MCS, the US District Court of Hawaii awarded disability benefits to a plaintiff whose *pro se* claim of "chemical hypersensitivity" dated from 1 May 1968; *Kornock v. Harris*, 648 F.2d 525, 9th Cir. 1980 [3 pages, R-59]; and *Kouril v. Bowen*, 912 F.2d 971, 974, 8th Cir. 1990 [7 pages, R-58]; *Creamer v. Callahan*, Civil No. 97-30040-KPN (D. Mass.), 5 November 1997, [7 pages, R-150] reversing and remanding the decision of the SSA Commissioner, who agreed that the administrative law judge's "analysis was flawed with respect to MCS." The court ordered the Commissioner to file a supplemental memorandum on SSA's "position with respect to MCS," which he did—specifically stipulating that SSA "recognizes multiple chemical sensitivity as a medically determinable impairment" (31 October 1997, 2 pages, R-164).

RECOGNITION OF MCS IN 21 U.S. STATE COURT DECISIONS

In decisions affirming MCS illness (by this or some other name) as a handicap or injury in cases regarding:

Housing Discrimination: *Lincoln Realty Management Co. v. Pennsylvania Human Relations Commission*, 598 A.2d 594, Pa. Commw. 1991 [47 pages, R-62].

Employment Discrimination: *County of Fresno v. Fair Employment and Housing Commission of the State of California*, 226 Cal. App. 3d 1541, 277 Cal. Rptr. 557 Cal App. 5th Dist. 1991 [11 pages, R-63]; and *Kallas Enterprises v. Ohio Civil Rights Commission*, 1990 Ohio App. 1683, Ohio Ct. App. May 2, 1990 [6 pages, R-64].

Health Services Discrimination: *Ruth, Barbara; June P. Hall; Cricket J. Buffalo; Susan Molloy; and Cathy Lent v. Kenneth Kizer/Molly Coe, Director, CA. Department of Health Services*, No. 665629-8, 1989 [1 page, R-65], in which the plaintiffs won the right to receive oxygen treatments for MCS by successfully appealing to the CA Superior Court of Alameda County which overturned the prior ruling of an administrative law judge.

Negligence/Toxic Tort: *Melanie Marie Zanini v. Orkin Exterminating Company Inc. and Kenneth Johnston*, Broward County Circuit Court, No. 94011515 07, verdict of 7 December 1995 and final judgement of 28 December 1995 [4 pages, R-92], in which the jury ruled that the pesticide applicator's negligence in applying Dursban was the legal cause of damage to the plaintiff, who was awarded a total of \$1,000,000 in damages by the jury. This was subsequently reduced to \$632,500 in the final judgement.; *Ruth Elliott, et al., v. San Joaquin County Public Facilities Financing Corp. et al.*, California Superior Court, San Joaquin County, No. 244601, 31 October 1996 [2 page verdict report, R-112] in which a public lease-back corporation was held responsible for 14 awards of partial to permanent disability based on MCS and various other health complaints that started after extensive renovations were inadequately ventilated (half the roof air conditioners did not work). Awards ranged from \$15,000 to \$900,000 each (total \$4,183,528) *Linda Petersen and Eleni Wanken v. Polycap of California*, California Superior Court, Alameda County, No. H7276-0, 1 April 1988 [1 page verdict report, R-143], in which plaintiffs were awarded \$250,000 and \$13,000, respectively, for MCS they developed after a polyurethane roofing material was installed at two school buildings where they worked. These jury awards led to prompt settlement of a dozen other cases against the same defendant.

Tort of Outrage and "Deliberate Intention" Exception to Workers Compensation: *Birklid et al v. The Boeing Company*, Supreme Court of the State of Washington, 26 October 1995, No. 62530-1, in which the court issued an EN BANC ruling in response to a question it "certified" from the Ninth Circuit Court of Appeals. By unanimous 9-0 decision, the WA Supreme Court found sufficient evidence of Boeing's deliberate intent to harm its employees from chemical exposure that the 17 workers who claim they were physically and/or emotionally injured as a result (including those with MCS) can sue the company for civil damages in addition to their workers' compensation benefits. (This "deliberate intention" exception was last allowed by the court in 1922). The court also found that the chemically-injured workers had a claim under the Tort of Outrage for recovery of damages arising from Boeing's intentional infliction of emotional distress. The matter now returns to the U.S. District Court for the Western District of Washington for a jury trial. [25 page decision with a 2 page background paper from Randy Gordon, one of the plaintiffs' attorneys., R-66].